

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 112,
Title 14, California Code of Regulations (CCR)
Re: Commercial Surfperch Season Closure

- I. Date of Initial Statement of Reasons: August 4, 2003
- II. Date of Pre-adoption Statement of Reasons: October 24, 2003
- III. Date of Final Statement of Reasons: December 10, 2003
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: October 3, 2003
Location: Redding, California
 - (b) Discussion Hearing Date: December 5, 2003
Location: Sacramento, California
 - (c) Adoption Hearing: Date: December 16, 2003
Location: Sacramento, California

- V. Update:

The Commission adopted the proposed extension of the commercial surfperch seasonal closure at their teleconference meeting on December 16.

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

Responses to public comments received prior to the discussion hearing were included in the Pre-adoption Statement of Reasons ([see attached](#)).

Comment by Mr. Jim Bassler, December 5, 2003 Commission meeting: Mr. Bassler spoke in support of the Department proposal. He said that he did not know of any opposition to the proposal from members of the commercial industry who land surfperch. He also commented that he thought that a seasonal closure should be imposed for the sport fishery as well. He explained that since the sport fishery took a much higher percentage of the overall surfperch catch, a seasonal closure on sport catch would help to prevent the take of pregnant females.

Department Response: Section 27.60, Title 14, California Code of Regulations (CCR) was amended and Section 28.59, Title 14, CCR was added to the ocean sport fishing regulations for the 2002-2004 regulatory cycle. These changes to the regulations included decreasing the daily bag and possession limit of surfperch within the 20-fish bag limit total from 10 of each species of surfperch in the aggregate to five surfperch (in combination of all surfperch species, excepting shiner surfperch for which the daily bag and possession limit is 20), imposing a minimum size limit of 10.5 inches coast wide for redbait surfperch, and establishing a seasonal closure on sport fishing from April 1 through July 31, inclusive, for all surfperch except for shiner surfperch, in San Francisco and San Pablo Bays. These regulatory changes have reduced the overall take of surfperch by the sport fishery and provided additional protection for birthing surfperch females within San Francisco and San Pablo Bays.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

The principal alternative is to limit the number of fishermen based upon previous participation in the fishery, and thereby, reduce the harvest of surfperch. Based on landing receipt data, the number of fishermen landing surfperch has declined 73 percent from 1992 to 2003. In 1992, 348 fishermen landed surfperch statewide compared to approximately 95

in 2002; consequently, statewide surfperch landings have declined as well. Developing a policy to limit the number of surfperch fishery participants is not needed barring substantive changes in current fishery trends.

(b) No change Alternative:

The no change alternative does not address the Department's or the public's concern for the take of spawning surfperch.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action is not expected to have a significant statewide adverse economic impact affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed closure extension of the commercial surfperch fishery may have a limited short-term impact on fishermen and fish wholesalers. The long-term (1984-2002) mean percentage of landings occurring in July is 9.5 percent representing 9,462 pounds. In July of 2002, a total of 41 fishermen landed 3,612 pounds of surfperch valued at \$5,235 or an average of \$128 per fisherman. The proposed closure extension will maintain a viable fishery and ensure that more surfperch would be allowed to spawn. Post-spawning fish would be available to the fishery in August. In the long term, these limited short-term economic impacts may be mitigated by higher economic returns with a more abundant surfperch resource.

(b) Impact on the Creation or Elimination of Jobs Within the State, the

Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

- (c) Cost Impacts on a Representative Private Person or Business: None
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Updated Informative Digest/Policy Statement Overview

Existing regulations authorize the take of surfperch of the family Embiotocidae for commercial purposes from July 16 through April 30, except shiner surfperch (*Cymatogaster aggregata*) which may be taken, sold, or purchased at any time. Surfperch may be sold or purchased only between July 16 and May 10 [Section 8395, Fish and Game Code (FGC)]. South of a line drawn east and west through Point Arguello, barred surfperch, redbtail surfperch, and calico surfperch may not be taken for commercial purposes (Section 8395, FGC). Surfperch of these three species that have been taken north of the line may be sold or purchased provided that each individual fish is permanently attached with a tag inscribed "California Department of Fish and Game-Surfperch" prior to shipment south of Point Arguello [Section 112, Title 14, California Code of Regulations (CCR)].

Also, the Commission was recently granted authority by the State Legislature to adopt regulations to manage the commercial surfperch fishery beginning in 2003, including authority to extend the commercial fishing closure for surfperch (Chap. 573, Stats 2002).

Surfperch include at least nineteen species of fish in the family Embiotocidae (variously termed surfperch, perch, and seaperch) that occur off California.

Proposed changes to the commercial surfperch regulations would extend the closed season for surfperch of the family Embiotocidae to July 30 and authorize sale and purchase of surfperch only between Aug 1 and May 10. The intended purpose of the proposed regulations is to offer further protection of spawning females while continuing to provide for a viable commercial fishery. In addition, minor organizational and editorial changes were (also) proposed to improve the clarity and consistency of the regulations.

Surfperch have undergone declines in catch, size, catch-per-unit effort (CPUE), and abundance based on fisheries dependent and independent surveys. They possess life history characteristics that make them susceptible to overfishing and vulnerable to habitat loss and degradation. Some species use nearshore areas as well as bays and estuaries to mate and give birth, with some species more at risk than others. Surfperch are live-bearers that produce an average of only 15 young each year, and may not rebound from population declines quickly. Concerns exist for the cumulative impacts of habitat loss and fishing that could lead to localized depletion of some surfperch species.

The Commission adopted the revisions to the commercial surfperch regulations as proposed by the Department on December 16, 2003 at a special meeting held in Sacramento.

Section 112, Title 14, CCR, is amended to read:

112. Surfperch, ~~Sale or Purchase: South of Point Arguello.~~

Surfperch of the family Embiotocidae may be taken, transported, possessed and sold for commercial purposes pursuant to the following conditions:

(a) Notwithstanding the surfperch fishing season as specified in Fish and Game Code subsection 8395(b), surfperch of the family Embiotocidae may only be taken between August 1st and April 30th, except shiner surfperch (*Cymatogaster aggregata*), which may be taken, sold, or purchased at any time. Notwithstanding the authorized sale and purchase dates specified in 8395 (b), surfperch may be sold or purchased only between August 1st and May 10th.

(b) Surfperch of the family *Embiotocidae* of the following species: barred surfperch; redbtail surfperch; and calico surfperch, taken during the open season north of a line drawn east and west through Point Arguello may be shipped south of said line and sold or purchased subject to the following regulations:

~~(a)~~(1) All such fish shall be individually tagged by the permanent attachment of tags inscribed "California Department of Fish and Game-Surfperch" before shipment south of said line. Possession of such fish south of said line without attached prescribed tags is unlawful for commercial purposes.

~~(b)~~(2) Tagging shall be conducted only by licensed wholesale fish dealers, their agents, or employees designated by the department. Said designated dealers are defined as those signing receipts for tags delivered to their place of business by department employees at cost. Designated dealers shall be required to produce official receipts for all said species of surfperch in quantities consistent with and corresponding to the number of tags requested.

~~(c)~~(3) It shall be unlawful to transfer, transport or possess unused tags at any location other than the designated dealer's licensed place of business.

~~(d)~~(4) The possession of unused surfperch tags, or any surfperch tags not attached to surfperch is unlawful in any place where fish are sold south of said line.

~~(e)~~(5) A fee of \$10 for each tag order shall be paid to the department to cover administrative costs.

NOTE

Authority cited: Section 8395, Fish and Game Code. Reference: Section 8395, Fish and Game Code.